

- 141 Because of the pro-competitive market structure in Washington, the competitors' means of competition—UNE-P, UNE-L, resale, and CLEC-owned facilities—all help to discipline the market. That is, they serve as an effective restraint on Qwest's ability to raise prices above competitive levels.
- 142 An important feature of this structure is the availability to competitors of UNE-P, which is the entire platform (loop, transport and switch included) used by Qwest to serve a customer. The monthly wholesale price of UNE-P to competitors is based on Qwest's cost to provide it, and is fixed by the Commission for five different cost-zones. A competitor can transfer a Qwest customer to the competitor's own UNE-P-based service for a payment to Qwest of a mere 27 cents (in addition to the monthly charge), and the process takes one day. Thus, UNE-P is a fixed-price, cost-based, and speedy way for competitors to acquire new customers. Moreover, competitors can transfer their existing customers to UNE-P, thereby reducing their costs to the more attractive UNE-P prices. These advantages of UNE-P explain its popularity and rapid growth. Competitors are providing UNE-P-based retail service in 61 of Qwest's 68 exchanges, and these exchanges cover 99.7% of Qwest's analog business lines. UNE-P lines represent approximately 25%¹⁷¹ of all competitors' analog business lines in Qwest's territory, and UNE-P lines increased 45% in the period December 2001 to December 2002.
- 143 The ubiquitous availability of UNE-P to CLECs provides an effective constraint against the ability of Qwest to exercise market power, that is, to raise its retail prices above competitive levels on a sustained basis. UNE-P is attractive to competitors, now. If Qwest were to raise its retail prices above competitive levels, competitors could compete all the more effectively by taking advantage of the greater margin between the UNE-P wholesale price, which is fixed, and Qwest's new, increased retail price. That dynamic will operate to constrain Qwest.
- 144 In light of the widespread availability of competitive offerings and a market structure that will constrain Qwest from exercising market power, there is no significant captive customer base.

¹⁷¹ Exhibit 232C

- 145 It is the policy of this state to encourage competition in the telecommunications industry.¹⁷² The purposes of competition include expanding choices for customers, bringing prices closer to costs, spurring innovation, driving down costs, and driving up quality of service. Competitive classification of the Selected Services is one step in furthering those purposes, all of which are in the public interest. Qwest and its many competitors must now compete for business customers on more equal terms, though there remain significant regulatory protections for customers. We think Washington is ready for that competition.
- 146 In summary, Qwest has met its burden to show that analog business services are subject to effective competition, and we conclude competitive classification of these services is in the public interest.

III. FINDINGS OF FACT

- 147 Having discussed above all matters material to our decision, and having stated our findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.
- (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including telecommunications companies.
 - (2) Qwest Corporation is registered as a telecommunications company providing service within the state of Washington as a public service company.
 - (3) On May 1, 2003, Qwest filed a request, pursuant to RCW 80.36.330 and WAC 480-121-062, for competitive classification of its analog flat-rate and measured-rate business local exchange services, PBX, and Centrex, throughout the state of Washington.

¹⁷² RCW 80.36.300.

- (4) Qwest will not waive the statutory prohibitions against undue or unreasonable preference or discrimination. *RCW 80.36.107 and RCW 80.36.108.*
- (5) Qwest will not abandon service to existing business customers in the exchanges it currently serves until November 2009.
- (6) Qwest's selection of services and geographic scope for its petition is appropriate and meets the requirements of RCW 80.36.330.
- (7) Qwest and Staff provided sufficiently accurate and reliable data showing the level of competition from CLEC wholesale-purchased and CLEC-owned business analog alternatives to support Qwest's petition.
- (8) The structure of the market in Qwest's serving territory is now pro-competitive and CLECs are easily able to enter the market anywhere in Qwest's serving territory to provide resale, UNE-P, UNE-L, and facilities-based services in competition with Qwest.
- (9) By use of these different forms of entry, CLECs provide service to small, medium, and large business customers throughout Qwest's service territory in the form of basic business service, PBX, and Centrex Services.
- (10) CLEC analog business services are a direct and complete substitute for Qwest's analog business services.
- (11) Between 27 and 37 CLECs are actively providing analog business services to customers throughout Qwest's service territory in Washington.
- (12) CLECs are serving approximately 28% of the analog basic business service market in Qwest exchanges, including to small business customers.
- (13) CLECs serve over 46% of the analog PBX market in Qwest exchanges. Analog PBX service is a reasonably available alternative to analog Centrex service.

- (14) Digital service, provided by both CLECs and Qwest, is not as close a substitute for analog service as analog alternatives, but is a relevant alternative to analog service.
- (15) A conservative estimate of CLECs' market share for business digital services is greater than their share of business analog services.
- (16) Wireless service, VOIP, and other modes of service are potential substitutes for analog services, but are accorded only light weight in this proceeding – as adding to the general competitive environment.
- (17) The effectively competitive structure of Washington's analog business market at this time, coupled with the protective provisions of RCW 80.36.330(4), (6) and (7), RCW 80.36.170, and RCW 80.36.180, constrains Qwest from using its market share and market concentration to exercise market power.
- (18) Based on the presence of a pro-competitive market structure, the presence of CLECs in every Qwest exchange, the availability of UNE-P in every exchange, and the active use of UNE-P in 61 of 68 Qwest exchanges that include 99.89% of Qwest's business customers, the number of possible captive business customers of Qwest is insignificant.
- (19) The record, taken as a whole, including evidence on an exchange and wire-center basis, demonstrates that there is effective competition statewide for Qwest's analog basic business local exchange services, PBX service, and Centrex service, and that there is no significant captive customer base in Qwest's service territory for such services.
- (20) Competitive classification of the Selected Services is consistent with the public interest.

IV. CONCLUSIONS OF LAW

148 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions of law pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and all parties to, these proceedings.
- (2) Qwest has sustained its burden of proof, based on the entire record, to show that there is effective competition for the services selected in its petition throughout the geographic area covered by the petition.
- (3) The Commission should grant the petition as filed.

V. ORDER

THE COMMISSION ORDERS That Qwest's petition is granted, effective January 1, 2004.

DATED at Olympia, Washington, and effective this 22nd day of December, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

APPENDIX A

80.36.330. Classification as competitive telecommunications companies, services--Effective competition defined--Prices and rates--Reclassification

(1) The commission may classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service if the service is subject to effective competition. Effective competition means that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base. In determining whether a service is competitive, factors the commission shall consider include but are not limited to:

(a) The number and size of alternative providers of services;

(b) The extent to which services are available from alternative providers in the relevant market;

(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and

(d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

(2) When the commission finds that a telecommunications company has demonstrated that a telecommunications service is competitive, the commission may permit the service to be provided under a price list. The commission may adopt procedural rules necessary to implement this section.

(3) Prices or rates charged for competitive telecommunications services shall cover their cost. The commission shall determine proper cost standards to implement this section, provided that in making any assignment of costs or allocating any revenue requirement, the commission shall act to preserve

affordable universal telecommunications service.

(4) The commission may investigate prices for competitive telecommunications services upon complaint. In any complaint proceeding initiated by the commission, the telecommunications company providing the service shall bear the burden of proving that the prices charged cover cost, and are fair, just, and reasonable.

(5) Telecommunications companies shall provide the commission with all data it deems necessary to implement this section.

(6) No losses incurred by a telecommunications company in the provision of competitive services may be recovered through rates for noncompetitive services. The commission may order refunds or credits to any class of subscribers to a noncompetitive telecommunications service which has paid excessive rates because of below cost pricing of competitive telecommunications services.

(7) The commission may reclassify any competitive telecommunications service if reclassification would protect the public interest.

(8) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a service classified as competitive if it finds that competition will serve the same purpose and protect the public interest.



5+K
Qwest
607 14th Street, NW, Suite 950
Washington, DC 20005
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Facsimile 202-293-0561

Melissa E. Newman
Vice President - Federal Regulatory

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MAR 25 2004
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 25, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matter of Section 272 (f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules, CC Docket No. 00-175*

Dear Ms. Dortch:

On January 29, 2004, Qwest submitted certain information in the above-captioned proceedings in response to an earlier Commission staff request. Subsequently, Commission staff requested that Qwest supplement the information that it provided on January 29, 2004. Qwest's response to the Commission staff's most recent request is attached. Portions of the attachment are being redacted and designated as Confidential - Not for Public Disclosure. Pursuant to Sections 0.457(d) and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457(d) and 0.459, Qwest requests that the redacted information in the attachment be withheld from public inspection. The redacted portions of the attachments contain Qwest's confidential information. Disclosure may cause substantial competitive harm to Qwest. Accordingly, the redacted information is appropriate for non-disclosure either under Sections 0.457(d) or 0.459 of the Commission's rules. It should be noted that all attached exhibits that Commission staff requested from Washington Utilities and Transportation Commission Docket No. UT-030614, Order No. 17, *Order Granting Competitive Classification*, also had been redacted since this information was subject to a Washington Utilities and Transportation Commission protective order and was not available for public inspection.

In accordance with Commission rules, Qwest is submitting (under separate cover) the non-redacted confidential version of the aforementioned attachments. Acknowledgment and date of receipt of this submission are requested. An original, one copy and a duplicate copy of this request are provided. Please date-stamp the duplicate upon receipt and return it to the

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Ms. Marlene H. Dortch
March 25, 2004

Page 2 of 2

courier. If you have any questions regarding this filing, please contact the undersigned at the contact information reflected in the letterhead.

Sincerely,

/s/ Melissa E. Newman

cc: Renee Crittendon (renee.crittendon@fcc.gov)
Brent Olson (brent.olson@fcc.gov)
Pamela Megna (pamela.megna@fcc.gov)
Ben Childers (ben.childers@fcc.gov)
Michael Carowitz (michael.carowitz@fcc.gov)
William Kehoe (william.kehoe@fcc.gov)
Jon Minkoff (jon.minkoff@fcc.gov)

Attachments

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**FCC DATA REQUEST
Sunset Proceeding (WC 02-112)
Qwest Responses**

1. Provide the total number of customers that have chosen the BOC affiliate as their interLATA PIC by month, by state, for the period 1/03-12/03.

Response: InterLATA PIC see Attachment 1; Local and Long Distance packages see Attachment 2

2. Provide the number of BOC customers choosing broadband/xDSL service by month, by state, for the period 1/03-12/03.

Response: See Attachment 3

3. Provide the number of UNE Platforms and UNE loops sold by month, by state, for the period 1/30-12/03.

Response: UNE Platforms see Attachment 4; UNE Loops see Attachment 5

4. For the enterprise market, provide some description of what the market looked like before Qwest received 271 relief and after 271 was granted.

Response:

Enterprise Market Definitions

- ***Qwest:*** Qwest defines the Enterprise market based on three common criteria: number of employees, number of locations, and amount spent. For the Enterprise market the customer (account) will have more than 500 employees, have multiple locations both in and outside of Qwest's 14-state region, and currently spend or have the opportunity to spend over \$10,000 monthly. Because of the size and locations of these accounts it is rare that they would have just one communications provider. Typically these customers purchase a wide variety of products and services from several providers to ensure redundancy and diversity.
- ***Industry Definition:*** large business, also known as an "enterprise," a large business is a company with 500 or more employees. (Source: IDC, Worldwide Conferencing Services Market Forecast and Analysis, 2000-2005, pg. 12)

Prior to 271 relief Qwest was limited in its ability to market and sell services to the enterprise market. While Qwest had a large presence out-of-region, it was hampered in working with the nationwide enterprise customers. Instead of looking at the customer's service request and trying to find the best solution, Qwest would look at the customer's request, apply the regulatory 271 filter, and then try and sell services. For example, if an enterprise customer had offices in Atlanta, New York, Denver and Seattle. Qwest could have provided service between Atlanta and New York, and Denver and Seattle. However, Qwest was significantly limited in its ability to carry traffic between Atlanta (out-of-region) and Denver (in-region). This resulted in Qwest only being able to offer enterprise services to approximately 40% of the total enterprise market.

Post 271 relief Qwest is able to offer enterprise customers a more complete set of services including nationwide voice, data and internet solutions.

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5. Provide the following attachments included in the Washington competitive classification order: Qwest Exhibits 51T, 53C, 54C, 55C
Washington Commission Exhibits 201T, 204C, 205C, 210C, 225C, 232C

Response: The Qwest Exhibits are confidential and are redacted in this Public Version of the Response.

The Washington Commission Exhibits were not provided to Qwest. To discuss the Exhibits contact Tom Wilson, Telecommunications Analyst, Washington Utilities and Transportation Commission, at 360-664-1282.

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ATTACHMENT 1

Qwest LD Corp (QLDC)
InterLATA Presubscribed Lines* by State - 2003

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
AZ												
CO												
IA												
ID												
MN												
MT												
ND												
NE												
NM												
OR												
SD												
UT												
WA												
WY												
Total												

* Data is as of the end of each month for residential customers.

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ATTACHMENT 2

Qwest LD Corp. (QLDC)
Subscribers* Purchasing Local and Long Distance Packages by State - 2003

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
AZ												
CO												
IA												
ID												
MN												
MT												
ND												
NE												
NM												
OR												
SD												
UT												
WA												
WY												
Total												

* Residential customers.

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ATTACHMENT 3

Qwest Corporation (QC)
DSL Subscribers* by State - 2003

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
AZ												
CO												
IA												
ID												
MN												
MT												
ND												
NE												
NM												
OR												
SD												
UT												
WA												
WY												
Total												

* Retail and wholesale customers.

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ATTACHMENT 4

Qwest Corporation (QC)
Total Monthly UNE Platforms In Service by State* - 2003

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
AZ												
CO												
IA												
ID												
MN												
MT												
ND												
NE												
NM												
OR												
SD												
UT												
WA												
WY												
Total												

* Purchased by CLECs.

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ATTACHMENT 5

Qwest Corporation (QC)
Total Monthly UNE Loops In Service by State* – 2003

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
AZ												
CO												
IA												
ID												
MN												
MT												
ND												
NE												
NM												
OR												
SD												
UT												
WA												
WY												
Total												

* Purchased by CLECs.

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Qwest
807 14th Street, NW, Suite 960
Washington, DC 20005
Phone 202-426-3120
Facsimile 202-283-0881

Melissa E. Newman
Vice President - Federal Regulatory

**REDACTED
FOR PUBLIC INSPECTION**

April 8, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington, DC 20554

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APR - 8 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *In the Matter of Section 272 (f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules, CC Docket No. 00-175*

Dear Ms. Dortch:

On March 25, 2004, Qwest submitted certain information in the above-captioned proceeding in response to an earlier Commission staff request. Subsequently, Qwest identified an error in Attachment 1 of that submission. In preparing the data for filing, a final sort was performed to put state data in alphabetical order. Unfortunately, only data for January - November was sorted; December data was inadvertently excluded. The data has now been sorted correctly and is attached (this attachment has been marked "CORRECTED" in order to distinguish it from the previous version, which should be eliminated). Portions of the aforementioned attachment are being redacted, with the confidential version of the attachment designated as Confidential - Not for Public Disclosure. Pursuant to Sections 0.457(d) and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457(d) and 0.459, Qwest requests that the non-redacted information in the attachment be withheld from public inspection. The non-redacted portions of the attachment contain Qwest's confidential information. Disclosure may cause substantial competitive harm to Qwest. Accordingly, the non-redacted information is appropriate for non-disclosure either under Sections 0.457(d) or 0.459 of the Commission's rules.

In accordance with Commission rules, Qwest is submitting (under separate cover) the non-redacted version of the aforementioned attachment. Acknowledgment and date of receipt of this submission are requested. An original, one copy and a duplicate copy of this request are provided. Please date-stamp the duplicate upon receipt and return it to the courier. If you have

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Ms. Marlene H. Dortch
April 8, 2004

Page 2 of 2

any questions regarding this filing, please contact the undersigned at the contact information reflected in the letterhead.

Sincerely,

/s/ Melissa E. Newman

cc: Renee Crittendon (renee.crittendon@fcc.gov)
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Jon Minkoff (jon.minkoff@fcc.gov)

Attachment

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ATTACHMENT 1- CORRECTED

Qwest LD Corp (QLDC)
InterLATA Presubscribed Lines* by State - 2003

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
AZ												
CO												
IA												
ID												
MN												
MT												
ND												
NE												
NM												
OR												
SD												
UT												
WA												
WY												
Total												

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